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Unsecured Creditors*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

VOYAGER DIGITAL HOLDINGS, INC., *et al.*,

Debtors.¹

)
) Chapter 11
)

) Case No. 22-10943 (MEW)

) (Jointly Administered)
)

**EX PARTE MOTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR ENTRY OF AN ORDER
AUTHORIZING THE FILING OF THE OBJECTION OF THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO PROOFS
OF CLAIM NOS. 11206, 11209, AND 11213 AND EXHIBITS IN SUPPORT
THEREOF UNDER SEAL AND GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) of Voyager Digital Holdings, Inc., *et al.* (collectively, the “Debtors”) hereby submits this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), authorizing the Committee to (a) file under seal the (i) *Objection of the Official Committee of Unsecured Creditors to Proofs of Claim Nos. 11206, 11209, and 11213* [Docket No. 936] (the “Objection”),

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Voyager Digital Holdings, Inc.’s and Voyager Digital Ltd.’s principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003. Voyager Digital, LLC’s principal place of business is 701 S. Miami Ave, 8th Floor, Miami, FL 33131.

a copy of which is attached hereto as **Exhibit B**, and (ii) Exhibits 10, 11, and 12 (collectively, the “Exhibits”) attached to the *Declaration of Joseph B. Evans in Support of the Objection of the Official Committee of Unsecured Creditors to Proofs of Claim Nos. 11206, 11209, and 11213* [Docket No. 937] (the “Evans Declaration”), copies of which are attached hereto as **Exhibit C**, and (b) provide unredacted versions of the Objection and the Exhibits to (i) the Court, (ii) the United States Trustee for the Southern District of New York, (iii) Kirkland & Ellis LLP, as counsel to the Debtors, (iv) the Debtors, (v) Sullivan & Cromwell LLP, as counsel to Alameda Ventures Ltd. (“Alameda Ventures”), and (vi) Alameda Ventures (collectively, the “Receiving Parties”). In support of this Motion, the Committee respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Committee confirms its consent to the Court entering a final order in connection with this matter to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. The statutory bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 9013-1 and 9018-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

BACKGROUND

3. On July 5, 2022 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. The Chapter 11 Cases are being jointly administered for procedural purposes only. No trustee or examiner has been appointed in the Chapter 11 Cases.

4. On July 19, 2022, the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the Committee pursuant to Bankruptcy Code section 1102(a) [Docket No. 102].

5. On August 5, 2022, the Court entered the *Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling Hearings and Objection Deadlines with Respect to the Debtors’ Sales, Disclosure Statement, and Plan Confirmation, and (V) Granting Related Relief* [Docket No. 248]. On August 22, 2022, the Debtors filed the *Notice of Filing of Revised Bidding Procedures* [Docket No. 328].

6. As a prerequisite to participating in the Debtors’ sale process, Committee members and Committee professionals entered into a non-disclosure agreement (the “NDA”) that prohibits the Committee from disclosing any information that they learn from their participation in the process. Section 1(b) of the NDA generally prohibits the Committee’s counsel and the other parties to the NDA from “disclos[ing] or caus[ing] to be disclosed, in any manner whatsoever, directly or indirectly, in whole or in part, [any] Confidential Information.”

7. On October 3, 2022, Alameda Ventures filed certain proofs of claim against the Debtors (collectively, the “AlamedaFTX Claims”), including: (a) Proof of Claim No. 11206

against Voyager Digital Holdings, Inc.; (b) Proof of Claim No. 11209 against Voyager Digital Ltd.; and (c) Proof of Claim No. 11213 is against Voyager Digital, LLC.

8. On January 31, 2023, the Committee filed the Objection and the Exhibits, which contain certain information (collectively, the “Confidential Information”) that falls within the scope of the NDA primarily regarding bids submitted and bidders that attended the auction conducted by the Debtors. Although the Committee believes that the Objection and the Exhibits should be filed without any redactions, the Committee is bound by the terms of the NDA.

RELIEF REQUESTED

9. The Committee respectfully requests entry of the Proposed Order authorizing the Committee to (a) file the Objection and Exhibits under seal, and (b) provide unredacted versions of the Objection and Exhibits to the Receiving Parties.

BASIS FOR RELIEF REQUESTED

10. Bankruptcy Code section 105(a) codifies the inherent equitable powers of the bankruptcy court and empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Section 107(b) provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information.² This section provides, in relevant part: “On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—protect an entity with respect to a trade secret or confidential research, development, or commercial information.”³ Bankruptcy Rule 9018

² See, e.g., *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (holding that a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films contained confidential commercial information).

³ 11 U.S.C. § 107(b)(1).

provides that, upon motion, “the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.”⁴

11. If the material sought to be protected satisfies one of the categories identified in Bankruptcy Code section 107(b), “the court is *required* to protect a requesting party and has no discretion to deny the application.”⁵ Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, Bankruptcy Code section 107(b) does not require a party to demonstrate “good cause.”⁶ “Courts have supervisory power over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose.”⁷ Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.”⁸

12. The Bankruptcy Code defines neither “commercial” nor “confidential.” The Second Circuit has defined information to be “confidential commercial information” if (a) the information concerns an entity’s business and (b) disclosure of the information would give competitors an unfair advantage.⁹ The information need not rise to the level of a trade secret to be protected under Bankruptcy Code section 107(b).¹⁰ Confidential commercial information

⁴ Fed. R. Bankr. P. 9018.

⁵ *Video Software Dealers Ass’n v. Orion Pictures Corp.* (*In re Orion Pictures Corp.*), 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original).

⁶ *Id.* at 28.

⁷ *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005).

⁸ *Orion Pictures*, 21 F.3d at 27.

⁹ *See, e.g., In re Orion Pictures Corp.*, 21 F.3d at 27 (“Commercial information has been defined as information which would cause ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” (quoting *Ad Hoc Protective Comm. for 10½% Debenture Holders v. Itel Corp.* (*In re Itel Corp.*), 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982))).

¹⁰ *In re Barney’s, Inc.*, 201 B.R. 703, 708–709 (Bankr. S.D.N.Y. 1996) (citing *In re Orion Pictures Corp.*, 21 F.3d at 26) (information need only be “so critical to the operations of the entity [requesting its protection from disclosure] that its disclosure will unfairly benefit the entity’s competitors.”).

includes information whose “disclosure would have a chilling effect on [business] negotiations, ultimately affecting the viability of Debtors.”¹¹

13. The Committee submits that the Confidential Information is protectable under Bankruptcy Code section 107(b) and Bankruptcy Rule 9018. The Confidential Information is covered by the NDA, including information obtained during the Debtors’ bidding procedures, sale, and plan process. The relief that the Committee is requesting herein is narrowly tailored to protect only the information that is entitled to protection, but not yet protected, from disclosure. Therefore, granting the requested relief is appropriate, if not necessary, for protecting such information.

NOTICE

14. The Committee will give notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the U.S. Trustee; (b) the Debtors; (c) the lender under the Debtors’ prepetition loan facility; (d) the United States Attorney’s Office for the Southern District of New York; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the Toronto Stock Exchange; (h) the attorneys general in the states where the Debtors conduct their business operations; (i) Alameda Ventures, and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the requested relief’s nature, no other or further notice need be given.

¹¹ *In re Borders Grp., Inc.*, 462 B.R. 42, 47–48 (Bankr. S.D.N.Y. 2011) (internal quotations omitted).

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter the Proposed Order granting the relief requested herein and such other relief that is necessary or appropriate in these circumstances.

Dated: New York, New York
February 1, 2023

MCDERMOTT WILL & EMERY LLP

/s/ Darren Azman

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*Counsel to the Official
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February 2023, I caused a true and correct copy of the foregoing *Ex Parte Motion of the Official Committee of Unsecured Creditors for Entry of an Order Authorizing the Filing of the Objection of the Official Committee of Unsecured Creditors to Proofs of Claim Nos. 11206, 11209, and 11213 and Exhibits in Support Thereof under Seal and Granting Related Relief* to be served on the Service List via (i) electronic notification pursuant to the CM/ECF system for the United States Bankruptcy Court for the Southern District of New York, (ii) e-mail, or (iii) First Class U.S. Mail, as indicated in attachment hereto.

/s/ Darren Azman
Darren Azman

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